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No. 136

In the Supreme Court of the United States

OCTOBER TERM, 1958

JAMES ALONZO DRAPER, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the court of appeals (R. 25–36) is reported at 248 F. 2d 295. The opinion of the district court (R. 16–21) denying petitioner's motion to suppress evidence is reported at 146 F. Supp. 689.

JURISDICTION

The judgment of the court of appeals was entered on September 12, 1957 (R. 36), and a petition for rehearing was denied on October 23, 1957 (R. 37). The petition for a writ of certiorari was filed on December 16, 1957, and granted on June 30, 1958 (R. 38; 357 U. S. 935). The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether information from an informer previously found reliable, coupled with corroboration of such information, constituted probable cause to arrest petitioner.

STATUTE INVOLVED

26 U. S. C. (Supp. V) 7607, added by Section 104 (a) of the Narcotic Control Act of 1956, 70 Stat. 570, provides in pertinent part:

> The Commissioner, Deputy Commissioner, Assistant to the Commissioner, and agents, of the Bureau of Narcotics of the Department of the Treasury, and officers of the customs (as defined in section 401 (l) of the Tariff Act of 1930, as amended; 19 U. S. C. sec. 1401 (l)), may—
>
> * * * * *
>
> (2) make arrests without warrant for violations of any law of the United States relating to narcotic drugs (as defined in section 4731) or marihuana (as defined in section 4761) where the violation is committed in the presence of the person making the arrest or where such person has reasonable grounds to believe that the person to be arrested has committed or is committing such violation.

STATEMENT

On October 3, 1956, a one-count indictment was returned against petitioner in the United States District Court for the District of Colorado charging violation of the federal narcotics law (21 U. S. C. 174) (R. 1). Petitioner's pre-trial motion (R. 1–2) to suppress heroin and a hypodermic syringe found

on his person and in a traveling case that he was carrying when arrested was denied (R. 16–21). Following trial before the court without a jury, he was convicted as charged and sentenced to imprisonment for 10 years as a second offender (R. 21–22).

The pertinent evidence adduced at the pre-trial hearing, on October 26, 1956, pursuant to petitioner's motion to suppress, may be summarized as follows:

On about September 3, 1956, John W. Marsh, for 29 years a narcotics agent for the United States Treasury Department, received information from one James A. Hereford, a special employee of the Bureau of Narcotics, that petitioner whose address was given was "peddling heroin" to addicts in Denver (R. 8). Subsequently, on September 7, 1956, Agent Marsh received further information from Hereford that petitioner had gone to Chicago by train the day before and that he was going to return to Denver by train on the morning of the 8th or 9th of September with about 3 ounces of heroin. Hereford gave the agent explicit data concerning petitioner's race, age, height, and weight and said that petitioner habitually walked fast. He also gave the agent a detailed description of petitioner's attire and said that he would be carrying a tan leather zippen bag.[1] Hereford had been a special employee of the Bureau of Narcotics for 6 months prior to this time and had been paid small

[1] In detail, Hereford's description of petitioner was as follows: a Negro; light-brown complexion; wearing a light-colored nylon raincoat, brown slacks, black shoes, and a gray felt hat; carrying a tan leather zipper bag; about 27 years of age, 5′ 8″ in height, and 160 pounds in weight; habitually a fast walker (R. 8–9, 10–11, 12).

sums of money for the information given. Agent Marsh testified that he had personally investigated all information Hereford had furnished him in the past, and had always found it to be reliable (R. 10). Hereford's death a few days after petitioner's arrest (September 13, 1956) precluded any possibility of his testifying at the pre-trial hearing (R. 8).

On September 8, acting upon the information imparted by Hereford, Agent Marsh, with other federal narcotics agents and a member of the Denver Police Department, went to the Denver railroad station and met all the incoming Chicago trains. They spotted no one fitting the description given by Hereford (R. 9). On the following day, September 9, the railroad station was again placed under surveillance. At about 8:20 a. m., a person accurately fitting the description given by Hereford was seen alighting from an incoming Chicago train (R. 9, 12). Finding Hereford's description exact in every detail, Marsh arrested this individual who, according to the agent and Sergeant Seaton of the Denver police, identified himself as "Carl Francis" (R. 9, 12). His billfold was immediately examined, revealing his true identity to be James A. Draper (R. 9). He was then immediately searched. Two paper packages containing approximately 2 ounces of heroin were found in his left hand which he had kept tightly clenched in his raincoat pocket (R. 9–10, 12). The leather bag that he was carrying was also opened and found to contain a hypodermic syringe (R. 10, 13). Petitioner was then taken to the office of the Bureau of Narcotics, informed that he did not have to make a statement, and

warned that any statement he did make could be used against him (R. 10).

The district court denied petitioner's motion to suppress the heroin and syringe, finding that the search and seizure was incident to a lawful arrest made on probable cause (R. 16–21). Following petitioner's conviction, the court of appeals affirmed, one judge dissenting (R. 25–36).

SUMMARY OF ARGUMENT

The single question in this case is whether Agent Marsh, the arresting officer, had probable cause to believe that petitioner had committed a felony. The information relied upon by Marsh consisted of a report by an informer of proven reliability (Hereford) and corroborating facts personally observed by Marsh. If these facts supplied a reasonable basis for Marsh's belief in petitioner's guilt, the arrest was valid and the particular and limited search of petitioner's person and his carrying-case, incident to the arrest, was proper.

1. Petitioner broadly attacks the use of "hearsay"—*i. e.*, reports of informers—as a basis for a finding of probable cause. But a determination of probable cause does not require the same standards of proof as the ultimate determination of guilt, and the technical rules controlling the admissibility of evidence in a judicial trial have no application. As this Court observed in *Brinegar* v. *United States,* 338 U. S. 160, 173, "There is a large difference between the two things to be proved [guilt or probable cause], as well as between the tribunals which determine them, and therefore a like difference in the *quanta* and modes

of proof required to establish them." The exclusionary rules applicable to criminal trials thus have no relevance to issues of probable cause involving "probabilities" and the "factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act" (*id.* at 175). On that issue, the sole question is whether " 'the facts and circumstances within their [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed" (*id.* at 175–176). The test is whether the information, whatever its nature, is reliable and trustworthy, not whether it would be admissible in a judicial trial under the rules of evidence. See also *Costello* v. *United States,* 350 U. S. 359, upholding an indictment based solely on hearsay testimony before the grand jury.

It does not follow, of course, that a report by an informer of incriminating facts will always be sufficient to justify an arrest. In all cases, however, the inquiry goes only to the "weight" and "probative force" of the information and not to its "admissibility"; the problem is simply that of weighing the reliability of the information under all the facts and circumstances of the particular case. Knowledge of the informer's reliability in the past, of his access to the information reported, and of the existence of circumstances tending to corroborate his report are, for example, considerations that may be crucial in a particular case. In addition, the proof required may vary depending upon the circumstances of the pro-

posed arrest: for example, the necessity for immediate action, the place and time of the arrest, and the nature of the offense. It is, therefore, impossible to state in a rigid rule the weight to be accorded to the statements of an informer, and it is upon the totality of circumstances in each case that the determination of probable cause must ultimately rest.

2. The concurrent finding of both courts below that under all the facts and circumstances of this case Agent Marsh had reasonable cause to believe that petitioner was illegally possessed of narcotics at the time of his arrest was fully supported by the evidence.

Agent Marsh was told by Hereford, an informer whose reliability had been personally confirmed by Marsh on past occasions, that the petitioner, whom he reported had been peddling heroin, had gone to Chicago to obtain a supply of heroin and would return by train on the next or the following morning. By personal observation of petitioner's arrival on the Chicago train, Marsh confirmed that petitioner had in fact been to Chicago, had returned "on schedule," and was wearing exactly the clothes that Hereford had said he would. From this confirmation that Hereford accurately knew that petitioner had gone to Chicago, knew when and how he would return, and even knew what he would be wearing—as well as from Hereford's proven reliability in the past—Marsh could reasonably infer that Hereford also knew, as he said he did, the purpose of petitioner's trip. And from the completion of the trip according to schedule, he could further infer that the trip had been successful and that petitioner was possessed of the narcotics he had

gone to Chicago to get. From the nature of the alleged offense, no further confirmation was possible.

At that point, Agent Marsh was faced with the alternative of immediately arresting petitioner, who was hurriedly leaving the station, or of risking the destruction, secretion, or distribution of the small (and readily disposable) packet of narcotics believed to be in his possession. In these circumstances, we submit that Agent Marsh's decision to arrest petitioner—during daylight, in a public place, and not requiring entry into petitioner's home or other private premises—was justified by the facts known to him and was a reasonable determination predicated upon the exigencies of the moment under a good faith belief in petitioner's probable guilt.

While Agent Marsh was entitled, under the statute, to arrest on probable cause without a warrant even if he had had time to obtain one (see *Trupiano* v. *United States*, 334 U. S. 699, 705), it is also clear from the circumstances indicated above that, by the time Marsh had sufficient information to constitute probable cause, immediate action was necessary to prevent probable disposition of the narcotics. Hence, the arrest without a warrant was entirely reasonable and made in good faith.

ARGUMENT

The single issue posited in this case is whether petitioner's arrest was valid. If it was, then the search of his person and his tan zipper bag, incidental to the arrest, was entirely proper. It is established that officers have the right "to search the person

of the accused when legally arrested to discover and sieze the fruits or evidences of crime. This right has been uniformly maintained in many cases." *Weeks* v. *United States,* 232 U. S. 383, 392; *Carroll* v. *United States,* 267 U. S. 132, 158; *Agnello* v. *United States,* 269 U. S. 20, 30.

The validity of the arrest in this case, just as in the case of an arrest with a warrant, pivots solely on the question of whether there was probable cause. Historical evidence, decisions of this Court, and in this case the plain Congressional directive (Narcotic Control Act of 1956, 70 Stat. 567, 570, *supra,* p. 2) emphasize that no additional justification need be shown to arrest for a felony without a warrant than need be shown to obtain a warrant. In either case the requirement is probable cause. See *Trupiano* v. *United States,* 334 U. S. 699, 705. The impracticability of obtaining a warrant or the existence of exceptional circumstances mandating immediate arrest attain significance in the non-warrant procedure only as these factors help to indicate whether the officers were proceeding in good faith, or aid in spelling out probable cause. The basic issue in each case, however, is whether the information which the officers had was sufficient to warrant the belief that the person arrested had committed a felony. We think there was probable cause for the arrest here and that in all the circumstances—the information received from a reliable informant plus the corroboration of that information by observation—the officers were justified in making the arrest. As we develop below, the issue is not whether some part of the information which the officers had is technically hear-

say; the issue is whether in totality that information constituted probable cause.

I

STATEMENTS OF AN INFORMER MAY PROPERLY BE CONSIDERED IN DETERMINING WHETHER THERE IS PROBABLE CAUSE TO BELIEVE THAT A SUSPECT HAS COMMITTED A FELONY

Petitioner broadly attacks the use of "hearsay" evidence to support a conclusion that there is probable cause to arrest. We may pass the question whether the information relied upon here was technically "hearsay",[2] for in any event it is clear that hearsay may properly be utilized for that purpose. The issue is not the technical one of the admissibility of the evidence as final proof of guilt but the eminently practical and non-technical one of whether the information possessed by the arresting officer, whatever its legal characterization, warrants a belief based upon reason that a felony has been committed and that the person sought to be arrested has committed it.

1. Just as the test of a reasonable search and seizure "cannot be stated in rigid and absolute terms" (*Harris*

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[2] If the information imparted by informer Hereford to Agent Marsh was based upon Hereford's personal knowledge and observation, it would not be hearsay in relation to Marsh's determination of probable cause. In the hearing on the motion to suppress, Marsh's testimony as to the assertions made to him by Hereford would be hearsay if used to establish the truth of those assertions, but it would not be hearsay if used only to prove that Marsh had probable cause to arrest. As noted below (pp. 32–34), however, the record is deficient on the extent to which Hereford had personal knowledge of the assertions made by him.

v. *United States,* 331 U. S. 145, 150), but "must find resolution in the facts and circumstances of each case" (*United States* v. *Rabinowitz,* 339 U. S. 56, 63), so the concept of probable cause is not amenable to precise definition and cannot provide in the abstract a clear-cut formula by which to measure the conduct of arresting officers. On the contrary, in the nature of things, probable cause requires in each case a proper balance between the requirements of effective law enforcement and the right of the individual to be left alone. Cf. *Johnson* v. *United States,* 333 U. S. 10. This Court in *Carroll* v. *United States,* 267 U. S. 132, 162, and most recently in *Brinegar* v. *United States,* 338 U. S. 160, 175–176, did not attempt any specific definition of probable cause, but laid down a broad general standard capable of embracing varying factual patterns:

> Probable cause exists where "the facts and circumstances within their [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that" an offense has been or is being committed.

See to like effect: *Stacey* v. *Emery,* 97 U. S. 642, 645; *Dumbra* v. *United States;* 268 U. S. 435, 441; *Husty* v. *United States,* 282 U. S. 694, 701.

Explaining in *Brinegar* that this standard seeks to "give fair leeway" for law enforcement while protecting "citizens from rash and unreasonable interferences with privacy" (338 U. S. at 176), the Court there accepted officer Malsed's testimony of Brinegar's

arrest and pending indictment on another charge
e issue of probable cause, although the same
ace would not have been admissible on the issue
it. The Court went on expressly to repudiate
rlier dictum of *Grau* v. *United States*, 287 U. S.
28, that facts constituting probable cause must
mpetent to convict. The Court, speaking through
Justice Rutledge, observed (338 U. S. at 176):

> These long-prevailing standards seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime. They also seek to give fair leeway for enforcing the law in the community's protection. Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability. The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating these often opposing interests. * * *

reliability of the information was made the criti-
nquiry, not whether the information would be
ssible in an adversary proceeding.[3]

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hile the court in *Brinegar* was dealing with the pro-
of a search without a warrant, Mr. Justice Rutledge
ed the issue to be: "whether there was probable cause for
gar's *arrest*" (338 U. S. at 164; emphasis added). More-
the Court's discussion of *Grau* and other decisions relat-
o search warrants and arrest without warrant (338 U. S.
4–176; particularly fns. 13 and 15) emphasizes that the
standard of probable cause laid down by the Court ap-

Under the *Brinegar* rationale, reliable information, though not gleaned from direct observation and hence not admissible on the issue of guilt, may nonetheless lead "sensibly to * * * conclusions of probability." Under some circumstances such information may in and of itself suffice to establish probable cause. In others it may warrant such a finding where the second-hand information is coupled with personal investigation and corroboration by the investigating officer. At the far extreme, the information may be too questionable to warrant any substantial consideration. In all cases, however, the sole question is what weight should be attached to the information and it is not to be discarded solely on evidential grounds which derive their justification from the nature of an adversary proceeding and have no pertinency in resolving the practical problem of probable cause.

2. The development of the hearsay rule is directly traceable to, and has its justification only in relation to, an adversary system. Thus during the early 1500's when the conduct of the trial was completely out of the hands of the litigants and the practice was for the jury to contact non-participants and to rely upon information provided by such persons, no hearsay rule existed, nor was one necessary. Only as time

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plies generally to the warrant and non-warrant procedure, whether arrest or search. *Brinegar* has been so read by Courts of Appeals: *Washington* v. *United States*, 202 F. 2d 214, 215 (C. A. D. C.), certiorari denied, 345 U. S. 956 (search warrant); *Hawkins* v. *United States*, 238 F. 2d 265 (C. A. D. C.), (search and arrest warrants), certiorari denied, 353 U. S. 925 (see Govt's. Brief, No. 538 Misc., O. T. 1956); *Seawell* v. *United States*, 243 F. 2d 909, 911, 912 (C. A. 4) (arrest without warrant).

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progressed and the parties themselves were allowed to submit evidence and call witnesses, and such judicially received evidence became the sole basis for the jury's decision, was the nature and quality of the evidence critically examined. See, generally, 5 Wigmore, *Evidence* 9–27 (1940 ed.); Morgan, *Hearsay Dangers and the Application of the Hearsay Concept,* 62 Harv. L. Rev. 177, 179–183 (1948); Morgan, *Some Problems of Proof* 106–109 (1956). From the development of the adversary proceeding evolved the rule against hearsay. It derived from the philosophy that the party against whom evidence is sought to be introduced should have the opportunity to put such evidence to the test of cross-examinaion. See 5 Wigmore, *Evidence* 3, 29 (1940 ed.). But while exclusion of hearsay evidence in an adversary proceeding may be essential to the preservation of the opposing party's right of cross-examination, the need for such exclusion is not present in an *ex parte* determination (either by a Commissioner in issuing a warrant or by an officer in making an arrest) where no right of cross-examination exists in any event. In such a determination the sole question thus becomes the weight and reliability of the hearsay information.

For these reasons, as we have indicated, the conventional rules of evidence play no part on the issue of probable cause. As this Court drew the distinction in *Brinegar* (338 U. S. at 173, 174–175):

> There is a large difference between the two things to be proved [probable cause or guilt], as well as between the tribunals which determine them, and therefore a like difference in

> the *quanta* and modes of proof required to establish them.
>
> For a variety of reasons relating not only to probative value and trustworthiness, but also to possible prejudicial effect upon a trial jury and the absence of opportunity for cross-examination, the generally accepted rules of evidence throw many exclusionary protections about one who is charged with and standing trial for crime. * * *
>
> However, if those standards were to be made applicable in determining probable cause for an arrest * * *, few indeed would be the situations in which an officer, charged with protecting the public interest by enforcing the law, could take effective action toward that end. Those standards have been seldom so applied.
>
> In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. The standard of proof is accordingly correlative to what must be proved.

Numerous decisions in the lower courts have either expressly or implicitly accepted the view that hearsay may be considered on the issue of probable cause. See, *e. g., Seymour* v. *United States,* 177 F. 2d 732 (C. A. D. C.); *Browner* v. *United States,* 215 F. 2d 753 (C. A. 6); *United States* v. *Walker,* 246 F. 2d 519 (C. A. 7); *Wrightson* v. *United States,* 236 F. 2d 672 (C. A. D. C.); *De Bruhl* v. *United States,* 199 F. 2d 175 (C. A. D. C.), certiorari denied, 344 U. S. 868; *Weise* v. *United States,* 251 F. 2d 867 (C. A. 9), cer-

tiorari denied, 357 U. S. 936; *United States* v. *Kancso*, 252 F. 2d 220 (C. A. 2); *Mills* v. *United States*, 196 F. 2d 600 (C. A. D. C.), certiorari denied, 344 U. S. 826; *United States* v. *Fowler*, 136 F. Supp. 926 (E. D. Tenn.), affirmed 229 F. 2d 215 (C. A. 6); *United States* v. *Burchfield*, 87 F. Supp. 805 (E. D. Tenn.); *United States* v. *Horton*, 86 F. Supp. 92, 97–98 (W. D. Mich.); *United States* v. *Jackson*, 149 F. Supp. 937 (D. D. C.), reversed on other grounds, 250 F. 2d 772; *United States* v. *Jackson*, 159 F. Supp. 845 (D. D. C.).[4]

While, in most of the cases, hearsay was considered together with other information possessed by law-enforcement officers, the fact that hearsay was considered at all on the issue of probable cause stands as a flat rejection of the doctrine that hearsay rules applicable to an adversary proceeding are also applicable to the present problem. As the Seventh Circuit pointed out in *United States* v. *Walker*, 246 F. 2d 519, 527:

> The technical rules of evidence regarding hearsay come into greater importance at a trial on the merits especially when jurors are participating. But in an instance of the type now be-

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[4] See also cases involving search: *Nichols* v. *United States*, 176 F. 2d 431 (C. A. 8) (search of moving vehicle without warrant); *Wyche* v. *United States*, 193 F. 2d 703 (C. A. D. C.) (search warrant), certiorari denied, 342 U. S. 943; *United States* v. *Guido*, 251 F. 2d 1 (C. A. 7) (search warrant), certiorari denied, 356 U. S. 950; *United States* v. *McCall*, 243 F. 2d 858 (C. A. 10) (search of moving vehicle without warrant); *Washington* v. *United States*, 202 F. 2d 214 (search warrant), certiorari denied, 345 U. S. 956; *Gilliam* v. *United States*, 189 F. 2d 321 (C. A. 6) (search of moving vehicle); *United States* v. *Schwartz*, 151 F. Supp. 399 (W. D. Pa.) (search warrant).

> fore us strict application of the hearsay rule is a sterile technicality if not an incorrect application of the exclusionary rule.

See, similarly, *United States* v. *Bianco*, 189 F. 2d 716, 720–721 (C. A. 3); *United States* v. *Heitner*, 149 F. 2d 105, 106–107 (C. A. 2), certiorari denied, *sub nom. Cryne* v. *United States*, 326 U. S. 727.

3. In analogous situations, this Court has recognized the use of hearsay in non-adversary proceedings. In *Costello* v. *United States*, 350 U. S. 359, it affirmed a conviction deriving from an indictment returned by the grand jury solely on hearsay evidence, the Court pointing out that the grand jury is an institution "in which laymen conduct their inquiries unfettered by technical rules" (350 U. S. at 364). In *Nowak* v. *United States*, 356 U. S. 660, the Court held that a "good cause" affidavit accompanying the complaint in a denaturalization proceeding was sufficient where based upon official records of the Immigration and Naturalization Service, even though the affiant, a government attorney, had no personal knowledge of the facts alleged. See also *Maisenberg* v. *United States*, 356 U. S. 670, 672.

If a grand jury can indict on reliable hearsay as in *Costello*, or a good cause affidavit necessary to institute denaturalization proceedings can be issued on trustworthy second-hand information as in *Nowak*, then it follows, we believe, that probable cause to arrest may likewise derive from information imparted by a reliable informant. The crucial inquiry in any of these situations turns upon the reliability of the informant and the credibility of his information.

4. We do not suggest that officers may rely on unfounded gossip in enforcing the law. What we do say is that the quality of hearsay may vary greatly and that information which is reasonably believed to be reliable is not to be rejected simply because it is hearsay. The officers have the right to consider all information that they may have on the issue of probable cause and it is to the totality of that information, including hearsay, to which the test of reasonableness should be applied.

Significantly, the early cases which laid the foundation for the rule permitting an officer to arrest without a warrant, where he had probable cause to believe that a felony had been committed and that the person arrested had committed it, involved reliance upon hearsay. See, *e. g., Samuel* v. *Payne,* 1 Dougl. 359–360 (K. B. 1780); *Ledwith* v. *Catchpole,* Cald. 291, 293–295 (K. B. 1783); 2 Hale, *Pleas of The Crown,* 84–97, 90; 4 Blacksone *Commentaries,* 292–293. While at first the emphasis was placed upon the officer's carrying out his duty regardless of the quality of the information upon which he was acting, soon the test became the trustworthiness and reliability of such information. See, Hall, *Legal and Social Aspects of Arrest Without A Warrant,* 49 Harv. Law Rev. 566, 569, 574–577. Similarly, in the early American state cases the criterion was not whether the officer's information derived from another but whether he had reason to rely upon it. *Holley* v. *Mix,* 3 Wend. (N. Y.) 350–353 (1829); *Rohan* v. *Sawin,* 5 Cush. (Mass.) 281, 284 (1850); Wilgus, *Arrest Without A Warrant,* 22 Mich. L. Rev. 541, 673, 695–699.

This emphasis upon the *quality* of the second-hand information rather than its hearsay character has apparently been accepted by this Court. For in both the *Carroll* and *Brinegar* cases, these early cases have been, at least implicitly, approved. In *Carroll* (267 U. S. 132, 161), the Court quoted with approval the following passage from *Commonwealth* v. *Carey*, 12 Cush. (Mass.) 246, 251 (1853): "but if he [a constable] suspects one on his own knowledge of facts, *or on facts communicated to him by others*, and thereupon he has reasonable ground to believe that the accused has been guilty of felony, the arrest is not unlawful" (emphasis added), citing, *inter alia*, for like definitions of probable cause, *Rohan* v. *Sawin*, *supra*, and *McCarthy* v. *De Armit*, 99 Pa. St. 63. In the *McCarthy* case, the Supreme Court of Pennsylvania said on the question of probable cause (99 Pa. St. at 69):

> The substance of all the definitions is a reasonable ground for belief of guilt. Representations of others may be an adequate foundation for it, especially if made by those who have had opportunities for knowledge, or who have made investigation * * *.

Again, the Court in *Carroll* (267 U. S. at 157) relied on the *Rohan* case for the further proposition that arrest without a warrant was justified upon "a reliable report of a felony". In *Rohan*, the following is quoted with approval from Hale, *Pleas to The Crown* (5 Cush. 284):

> If a felony be committed, and A. acquaint the constable that B. did it, the constable may take

him and imprison him, at least till he can bring him before some justice of the peace.

In *Brinegar* (338 U. S. at 175), the Court, noting that it had been approved in the *Carroll* opinion, quoted the *McCarthy* case for the proposition that probable cause "is a reasonable ground for belief of guilt".

We reiterate that we do not suggest that all second-hand information constitutes a proper basis for a finding of probable cause. On the contrary, we agree that some hearsay may be so untrustworthy that no reasonable action may be taken thereon. The crux of our position is that the nature and quality of the information under all the circumstances is the critical element, not any rigid formula of exclusion designed to meet the needs of an adversary proceeding.[5] On the one hand, for example, if an officer receives a tip from an anonymous informer incriminating another in the commission of a felony and without any independent investigation proceeds to arrest, the arrest might well be invalid. See *e. g.*, *Wrightson* v. *United States*, 222 F. 2d 556 (C. A. D. C.); *Contee* v. *United States*, 215 F. 2d 324, 327 (C. A. D. C.). On the other hand, where an officer receives information from

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[5] We have no quarrel with the cases relied upon by petitioner, if they turn on their own particular facts. Our quarrel is with an uncritical rejection of the use of hearsay without explanation, or on a theory applicable only to an adversary proceeding. Many of the cases petitioner cites rely upon the now discredited dictum of *Grau* v. *United States*, 287 U. S. 124, 128 (see *supra*, p. 12). *E. g.*, *Wakkuri* v. *United States*, 67 F. 2d 844 (C. A. 6); *United States* v. *Castle*, 138 F. Supp. 436 (D. D. C.); *Worthington* v. *United States*, 166 F. 2d 557 (C. A. 6).

a source of known reliability, the "practical considerations of everyday life" warrant reliance upon it. As Judge Learned Hand said in *United States* v. *Heitner*, 149 F. 2d 105, 106 (C. A. 2), certiorari denied *sub nom. Cryne* v. *United States*, 326 U. S. 727: "It is well settled that an arrest may be made upon hearsay evidence; and indeed, the 'reasonable cause' necessary to support an arrest cannot demand the same strictness of proof as the accused's guilt upon a trial, unless the powers of peace officers are to be so cut down that they cannot possibly perform their duties".*

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* In the *Heitner* case, the "hearsay" relied upon was a report to the arresting officer from his "precinct." The court did not, however, distinguish such information from equivalent information from any other reliable source, and held simply that that information, coupled with the facts directly observed by the arresting officer, was sufficient to give the officer "reasonable cause" to make the arrest. See also *Weise* v. *United States*, 251 F. 2d 867 (C. A. 9), certiorari denied, 357 U. S. 936; *Colorado* v. *Hutchinson*, 9 F. 2d 275, 276 (C. A. 8).

In *United States* v. *Bianco*, 189 F. 2d 716 (C. A. 3), relied upon by petitioner (Pet. Br. 8), the court did give a special effect to inter-agent communications by FBI agents. There, agent *A*, the arresting agent, had been told by agent *B* simply that agent *C* (p. 718) "had received reliable information that Bianco would take the 8:25 plane [from Baltimore to Pittsburgh and] that he had lottery materials with him." On that basis alone, agent *A* arrested Bianco when he arrived in Pittsburgh. The court, implying that what was known to agent *A* (merely a third or fourth-hand report from an unidentified source) was by itself insufficient to constitute probable cause, held that it was not restricted in determining probable cause to the information that had been communicated to agent *A* but that it could also consider the facts known to *C* but not communicated to *A*. It thought such attribution of knowledge to be appropriate because of the necessity of summary inter-agent communications in view of the size and character of the FBI. As

In the first *Wrightson* case, cited by petitioner, the Court of Appeals for the District of Columbia Circuit rejected as insufficient to show probable cause evidence which revealed no more than that the arresting officer was acting on an anonymous tip. *Wrightson* v. *United States*, 222 F. 2d 556. However, when, at the subsequent trial, the arresting officer testified that he had been investigating the robbery for some days and that the information incriminating Wrightson came from "an informer whom he knew, and in whom he had confidence" the court of appeals affirmed the second conviction on the ground that there was probable cause to arrest. 236 F. 2d 672, 673. Here again, the approach focused upon the reliability of the information. That it was hearsay meant only that it was sub-

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the other side of the coin, it followed that the inter-agent communication could have no independent effect apart from the knowledge on which it was based (and which, under the court's theory, was attributed to the arresting officer) and hence it was necessary that the knowledge of agent *C* be scrutinized to determine if it constituted probable cause, which the court held it did. It is clear that this analysis was based on the agency relationship among fellow FBI agents and has no application to information received from an independent source. In such a case, it would seem that the only question is whether the information actually communicated to the arresting officer supported the finding of probable cause and that any information known to the informant but not communicated would be of no avail. Contrariwise, since it is only the communication itself that is relevant, the basis for the informant's knowledge is not directly in issue (though, of course, the extent to which the informant disclosed the basis of his information would affect the weight that could reasonably be given to it). This distinction is recognized in the *Bianco* case itself, where the court considered, as supporting the finding of probable cause, information given to agent *C* by an informant even though there was no proof of the basis for the informant's knowledge.

ject to scrutiny for reliability. But once it had passed muster, it was to be considered on the issue of probable cause just as any other facts and circumstances of the case. See *United States* v. *Gowen,* 40 F. 2d 593, 596 (C. A. 2), reversed on other grounds, *sub nom. Go-Bart Co.* v. *United States,* 282 U. S. 344 (Swan, J.: "It is urged that the 'probable cause' which will justify arrest of a felon must be founded on more than unsworn hearsay. But neither in reason nor upon the authorities is the rule so limited; rather, the test is whether the belief is reasonable"). See also *United States* v. *Li Fat Tong,* 152 F. 2d 650, 652 (C. A. 2); *King* v. *United States,* 1 F. 2d 931 (C. A. 9); *Cannon* v. *United States,* 158 F. 2d 952, 954 (C. A. 5), certiorari denied, 330 U. S. 839; *Mueller* v. *Powell,* 203 F. 2d 797, 802–803 (C. A. 8); *United States* v. *Walker,* 246 F. 2d 519, 527 (C. A. 7); *United States* v. *Jackson,* 149 F. Supp. 937, 939 (D. D. C.), reversed on other grounds, 250 F. 2d 772 (C. A. D. C.); *United States* v. *Jackson,* 159 F. Supp. 845, 846 (D. D. C.); *Ard* v. *United States,* 54 F. 2d 358, 359 (C. A. 5), certiorari denied, 285 U. S. 550; cf. *Husty* v. *United States,* 282 U. S. 694.

5. In most cases in which hearsay is involved, the issue of probable cause does not turn solely upon the second-hand information. If the information from a source of known reliability pinpoints with accuracy a particular individual as the perpetrator of a past felony, we believe that it, standing alone, will constitute probable cause. In most cases, however, there are numerous component factors considered together with the hearsay information and it is the combination

of all of the factors which actually decides the issue of probable cause. Pertinent may be the identity of the informer, the nature of the offense, the place and time of arrest or of the search, corroboration, attempted or possible, and the existence of additional information which tends to verify or cast doubt on the informer's story.

(*a*) *The locus of arrest.*—If arrest or search occurs in the privacy of a defendant's dwelling, more stringent standards of reasonableness may be imposed. See *Harris* v. *United States,* 331 U. S. 145, 151, n. 15; *Davis* v. *United States,* 328 U. S. 582, 593; *Carroll* v. *United States,* 267 U. S. 132, 153.

As Judge Learned Hand has noted, confidential information that would support the search of a car might not support the search of a building. *Somer* v. *United States,* 138 F. 2d 790, 791 (C. A. 2). On this same rationale, facts which support the arrest of a person in a public place might be deemed insufficient to justify an arrest in a home. Thus, *Worthington* v. *United States,* 166 F. 2d 557 (C. A. 6), which uncritically rejected consideration of hearsay, apparently under any circumstances, actually involved an arrest of defendant in her home followed by a four-hour search, deriving from an anonymous uncorroborated tip.[1] It was thereafter limited to its own facts by the

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[1] In *United States* v. *Castle,* 138 F. Supp. 436 (D. D. C.), entry into the defendant's home was gained by subterfuge; in *United States* v. *Tom Yu,* 1 F. Supp. 357 (D. Ariz.), and *United States* v. *Lassoff,* 147 F. Supp. 944 (E. D. Ky.), by force; and in *United States* v. *Vleck,* 17 F. Supp. 110 (D. Nebr.), as an excuse to make a search without warrant. On the other hand, in cases not involving the invasion of the home, the

Sixth Circuit in *Browner* v. *United States*, 215 F. 2d 753; cf. *Mueller* v. *Powell*, 203 F. 2d 797, 802–803 (C. A. 8).

(*b*) *The informer's identity.*—Second-hand information may be rejected where the information relied upon is an "anonymous tip".[8] Courts have also required considerable corroboration where the informer's identity is not revealed to the accused, although known by the law enforcement officer. See *Roviaro* v. *United States*, 353 U. S. 53, 61, where this Court noted:

> Most of the federal cases involving this limitation on the scope of the informer's privilege [disclosure of informant's identity] have arisen where the legality of a search without a warrant is in issue and the communications of an informer are claimed to establish probable cause. In these cases the Government has been required to disclose the identity of the

courts seem ready to accept the use of hearsay on the issue of probable cause. See, *e. g.*, *Husty* v. *United States*, 282 U. S. 694; *Cannon* v. *United States*, 158 F. 2d 952, 954 (C. A. 5), certiorari denied, 330 U. S. 839 (moving vehicle); *United States* v. *One 1946 Plymouth Sedan*, 167 F. 2d 3 (C. A. 7) (moving vehicle); *Coupe* v. *United States*, 113 F. 2d 145, 147–148 (C. A. D. C.), certiorari denied, 310 U. S. 651 (moving vehicle); *United States* v. *Walker*, 246 F. 2d 519 (C. A. 7) (arrest and search of moving vehicle); *United States* v. *Kancso*, 252 F. 2d 220 (C. A. 2) (arrest as defendant left subway station).

[8] *E. g.*, *Contee* v. *United States*, 215 F. 2d 324, 327 (C. A. D. C.) ("An uncorroborated tip by an informer whose identity and reliability are both unknown does not constitute probable cause to make an arrest"); see also *Brown* v. *United States*, 4 F. 2d 246 (C. A. 9).

formant unless there was sufficient evidence
art from his confidential communication.

Scher v. *United States*, 305 U. S. 251, the
oided justifying the defendant's arrest and
h of a moving vehicle upon "confidential in-
n", relying instead upon information adduced
fficers through their own senses. The Court
to consider the hearsay because the defend-
uest to learn the name of the informer was
by the trial judge.[9] See also *McQuaid* v.
States, 198 F. 2d 987, 989 (C. A. D. C.), cer-
enied, 344 U. S. 929; *United States* v. *Blich*,
627 (D. Wyo.); cf. *Wisniewski* v. *United*
7 F 2d 825, 826 (C. A. 6).

orroboration.—In the usual case, second-hand
tion is viewed together with information
he law-enforcement officer has on his own
ge. Such personal verification would appear
a twofold effect. It tends to strengthen and
ate the leads obtained, and reflects the officer's
th in obtaining as much information as pos-
fore taking an individual into custody or in-
a search. Even if what the officer sees, if

[9] Discussing the *Scher* case, Judge Learned Hand ob-
United States v. *Heitner*, *supra*, 149 F. 2d at 107):
e trial court had ruled out some questions designed to
sources of the information on which the officers had
d the court, recognizing the propriety of the inquiry,
d upon to justify the arrest upon the ground that it
depended, or at least need not have depended, 'upon
bility of something told but upon what they saw and
hat took place in their presence'. In this there is no
n that 'something told' could not have furnished 'rea-
cause' for the arrest; indeed, the implication was
the contrary."

considered alone, might not amount to probable cause, it may take on added significance when coupled with the information given to him.

In *Husty* v. *United States*, 282 U. S. 694, the fact that the officers found the defendant's car as described at the place noted by the informer was held to give credence to the informer's story and thus establish probable cause. In *Christensen* v. *United States*, decided August 28, 1958, No. 1437 (C. A. D. C.), the officers had information that the defendant was selling narcotics at a particular place. Before arrest they investigated the "tip", found defendant at the place "in whispered conversation" and carrying a brown paper bag. In finding probable cause, the court observed (slip op., p. 2): "We cannot view the advance 'tip' information and the observations of the police detective in two separate, logic tight compartments. Neither one standing alone would constitute probable cause, but together they composed a picture meaningful to a trained, experienced observer."[10]

[10] See also *White* v. *United States*, 16 F. 2d 870, 871–872 (C. A. 9), certiorari denied, 274 U. S. 745 (arrest without warrant); *Bradford* v. *United States*, 194 F. 2d 168, 169 (C. A. 6) (arrest and search of moving vehicle without warrant); *Gilliam* v. *United States*, 189 F. 2d 321, 323 (C. A. 6) (search of moving vehicle); *King* v. *United States*, 1 F. 2d 931 (C. A. 9) (arrest and search of moving vehicle without warrant); *Browner* v. *United States*, 215 F. 2d 753 (C. A. 6) (arrest without a warrant); *Mills* v. *United States*, 196 F. 2d 600, 602 (C. A. D. C.), certiorari denied, 344 U. S. 826 (arrest without a warrant). Lack of corroboration was obviously a factor for rejecting the second-hand information in *United States* v. *Baldocci*, 42 F. 2d 567 (S. D. Cal.); *United States* v. *Hill*, 114 F. Supp. 441 (D. D. C.); *United States* v. *Clark*, 29 F. Supp. 138 (W. D. Mo.); *United States* v. *Tom Yu*, 1 F. Supp. 357 (D. Ariz.).

Logic dictates that the more summary, general, or otherwise doubtful the second-hand information, the greater the need for personal investigation and corroboration by the law-enforcement official, particularly where the arrest or search occurs in a private dwelling. By the same token, the more cogent and reliable the tip, the less the corroboration needed. That no ready rule of thumb is discernible from the cases is only further evidence that each case presents its special facts and problems which must be dealt with before the issue of probable cause can be resolved. The sum of it is that "probable cause" is a practical decision involving numerous components to be evaluated against the circumstances of each case, and not a mathematical formula subject to easy definition and application.

II

THE INFORMATION FURNISHED BY HEREFORD, AN INFORMER OF PROVEN RELIABILITY, COUPLED WITH THE CORROBORATING FACTS PERSONALLY OBSERVED BY THE ARRESTING AGENT, CONSTITUTED PROBABLE CAUSE TO ARREST

We have shown in Point I that the information related to Agent Marsh by informer Hereford was entitled to consideration on the issue of probable cause. All that remains is the essentially factual question whether under all the facts and circumstances of this case, including but not limited to that information, Agent Marsh had probable cause to believe that petitioner had committed a felony. After reviewing the evidence in detail, both courts below held that he did.

That concurrent finding of both courts below is entitled to great weight, and we submit that their appraisal of the evidence cannot be said to be erroneous.

1. As the Statement shows (*supra*, p. 3), Agent Marsh received information from special employee Hereford that petitioner was peddling heroin. A few days later, Hereford informed Marsh that petitioner had gone to Chicago to obtain three ounces of heroin and would return with the heroin on the morning train on the next or the following day. He gave Marsh detailed data concerning petitioner's race, age, appearance, clothing and manner of gait and further informed the agent that petitioner would be carrying a tan zipper bag. Marsh, who had 29 years of experience as a narcotics agent, had received information from Hereford in the past and without exception had found him to be reliable. Having no reason to doubt him on this occasion, he put the information given him to the test of investigation, placing the incoming trains from Chicago on the two mornings indicated under close surveillance. On the second morning, a person walking quickly and fitting in precise detail Hereford's description of petitioner alighted from the Chicago train. Having thus verified that petitioner had indeed been to and returned from Chicago, in exact conformity with the plan related by Hereford, Agent Marsh proceeded to arrest petitioner. In response to Marsh's inquiry, petitioner gave a fictitious name, but examination of his billfold confirmed his identification as the petitioner. The ensuing search revealed two ounces of heroin clasped in his left hand and a hypodermic syringe in his tan travelling bag.

We believe that, viewed in totality, these facts provided Agent Marsh with "reasonable grounds" [11] to arrest.

2. Petitioner contends (Pet. Br. p. 7) that Agent Marsh could not have obtained a warrant of arrest on the information he received from Hereford and consequently that the arrest without a warrant was invalid. If petitioner means that the agent could not then have acted upon Hereford's information without any attempt at corroboration, we might well agree. That, however, is not because the information was second-hand, but because it disclosed only a plan to commit a felony in the future. In such a case, despite the informer's reliability, some corroboration that the plan had been carried out would seem to be appropriate before undertaking to arrest.

The fact is, however, that Agent Marsh did not proceed to arrest solely upon Hereford's representations. On the contrary, in cooperation with local Denver police, he placed all incoming Chicago trains under close surveillance on the mornings when Hereford had said petitioner would return. The surveillance bore fruit and Marsh was able thereby personally to verify, to a great extent, Hereford's allegations. Thus Marsh confirmed, through personal observation, Hereford's report that petitioner had been in Chicago, and the date, time and method of his return to Denver.

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[11] 26 U. S. C. 7607, *supra*, p. 2, authorizes an arrest without a warrant when there are "reasonable grounds" to believe that the person arrested has violated the federal narcotic laws. This standard is the same as probable cause. See *United States* v. *Valker*, 246 F. 2d 519, 526 (C. A. 7).

He observed further that Hereford was correct to the last detail concerning petitioner's appearance, attire, and mode of walking.

This information, gained by Marsh's personal observation, was important for two reasons. First, by confirming both Hereford's detailed description of petitioner and his attire and Hereford's statement that petitioner would be on the train from Chicago on the particular morning, it showed that Hereford had intimate and accurate knowledge of petitioner's habits and activities, and hence added great weight—in terms both of credibility and of accuracy—to the rest of the information supplied by Hereford. Second, the fact that petitioner returned from Chicago precisely in accordance with the plan reported by Hereford supported the inference that the plan had indeed been carried out and that petitioner had with him the heroin that he had gone to Chicago to obtain. It was on the basis of this corroboration of Hereford's statement, as well as the proven reliability of Hereford on past occasions—not, as petitioner would have it, solely on the basis of Hereford's statement standing by itself—that Agent Marsh concluded that there was probable cause to believe that petitioner was illegally possessed of narcotics. Even if that conclusion had proved to be mistaken, which it did not, we submit that the mistake would have been that of a reasonable man "acting on facts leading sensibly to * * * conclusions of probability" (*Brinegar* v. *United States,* 338 U. S. 160, 176), and not that of an overzealous officer acting on mere suspicion.

3. Petitioner further objects to the failure of the Government to show the basis for the information supplied by Hereford or to show that Hereford had told Marsh the basis for his statements. It is true that, at the hearing on the motion to suppress, Agent Marsh testified only that he had "received information" from Hereford that petitioner was peddling heroin and had gone to Chicago to obtain a further supply (R. 8), and did not testify as to what that "information" consisted of. Neither government counsel nor petitioner's counsel asked Marsh what, if anything, Hereford told him of the facts on which he based that information. The reason no doubt was that the petitioner did not contend at the hearing that the basis for the informant's conclusions was inadequate but argued only that the report, whatever its basis, was mere hearsay and could not support a finding of probable cause. Thus on cross-examination of Marsh, petitioner's counsel sought to show only that Marsh had no information other than that given him by Hereford and did not question what facts Hereford's information was based on (R. 11). It may be, however, that that failure does not preclude petitioner from making the argument here and that, if such additional proof were essential, it would be appropriate to remand the case for a further hearing on that issue, either separately or as an incident to a new trial. But in our view such direct proof of the basis for Hereford's information was not essential and the reliability of Hereford's information was more than adequately established by other proof.

Conclusory information from an informant, stand-

ing alone, might not be adequate, in certain circumstances, to support a finding of probable cause, especially if there is no test available of the validity of the informant's inferences from the observed facts. Proof of the basis for an informant's conclusions is not, however, the only way in which the validity of those conclusions can be verified. The consistent accuracy of the informant's reports in the past may give added weight to a report that could not be relied upon if made by an untested informant. Even better, crucial elements of the report can sometimes be verified by direct observation.

In this case, both types of confirmation were present. Agent Marsh testified that he had personally investigated prior information furnished by Hereford and invariably found it to be reliable. In addition, his personal observation of petitioner arriving by train from Chicago, exactly as Hereford had said he would, not only proved that Hereford did indeed have detailed and accurate knowledge of petitioner's activities but also corroborated the execution of the plan related by Hereford. While there was, of course, no direct corroboration of the purpose of petitioner's trip to Chicago, the confirmed accuracy of Hereford's report in all other respects made his statement of the purpose sufficiently reliable to constitute probable cause. That is, from the proven facts that Hereford knew that petitioner had gone to Chicago, knew when he would return, and knew what he would be wearing, it was reasonable for Marsh to infer that Hereford also knew, as he claimed, why petitioner had gone to Chicago. If anything, this direct confirmation of the

accuracy of Hereford's information was even more cogent and persuasive proof of its reliability than evidence of the source of that information would have been.

In *Browner* v. *United States*, 215 F. 2d 753 (C. A. 6), the informer advised the government agents that the defendant would be at his house that night to sell him narcotics. At the time designated, the officers observed two persons entering the informer's house answering the description given them, and proceeded to arrest. In upholding the arrest, the court said (p. 753): "The information received by the agents from the informer did not of itself warrant the arrest; but when the defendants appeared at the home of the informer at approximately the time agreed upon and answered the description given to the agents, it imparted verity to the information received." See also *United States* v. *Li Fat Tong*, 152 F. 2d 650 (C. A. 2); *United States* v. *Jackson*, 149 F. Supp. 937 (D. D. C.), reversed on other grounds, 250 F. 2d 772 (C. A. D. C.). So here, even though receipt of the reliable information alone may not have justified arrest, its corroboration to the extent possible gave the arresting officer probable cause to arrest.

4. In judging the reasonableness of Agent Marsh's action, the circumstances under which the arrest was made and the practical necessities of the moment are also relevant. The arrest occurred in the daylight in a public place while petitioner was quickly leaving. There was no entry into petitioner's home nor onto his premises. Petitioner was reasonably believed to have on his person, at that very moment, several

ounces of heroin, contained in a small package that could be readily passed on or destroyed, should the slightest suspicion be aroused. To have delayed action would have created a grave danger that the heroin would either be disposed of or secreted—or be distributed to users. In these circumstances, Marsh's action, based upon reliable information that he had personally confirmed in numerous respects, cannot be said to have been unreasonable; it was rather a rational decision predicated upon the exigencies of the moment under a good faith belief in petitioner's probable guilt.

Nothing said in *Giordenello* v. *United States,* 357 U. S. 480, is inconsistent with this conclusion. There, the officer, seeking an arrest warrant, had filed a complaint with the United States Commissioner alleging simply that "on or about January 26, 1956, at Houston, Texas * * * Giordenello did receive * * * heroin hydrochloride with knowledge of unlawful importation; in violation of" 21 U. S. C. 174. This allegation—no more than a statement of the elements of the crime with no underlying facts or any showing of the nature of the officer's knowledge—was held to be inadequate to enable the Commissioner to determine whether there was probable cause to believe that the suspect had committed the alleged crime. Here, on the other hand, Agent Marsh testified not only that he had received the information from an informant of proven reliability but also that he had confirmed by personal observation a large part of the information given him. There is no similarity in the two cases.

5. From the foregoing we think it clear that, had

Agent Marsh appeared before a Commissioner—following his personal observation of petitioner's arrival on the Chicago train and his corroboration, to that extent, of Hereford's information—an arrest warrant would properly have issued. It follows that the arrest without a warrant on those same facts, expressly authorized by the statute (*supra*, p. 2), was valid even if the agent had had time to get a warrant. *Trupiano* v. *United States*, 334 U. S. 699, 705. Under the circumstances here, however, it is clear that Marsh did not have time to seek a warrant. As noted above, we do not claim that the agent had probable cause for an arrest prior to the time that he observed petitioner alighting from the Chicago train. At that time, petitioner, with the heroin he was believed to have in his possession, was hurriedly leaving the train station. Narcotics may be easily secreted and, where deemed necessary, quickly destroyed. As the Second Circuit observed in *United States* v. *Kancso* (252 F. 2d 220, 222):

> Standards which might be reasonable for the apprehension of bank robbers might not be reasonable for the arrest of narcotics pedlers. Large quantities of heroin can be transported in very small packages and, even as here, on a person without physical detection. These drugs are passed through the community by stealth. If narcotics agents are to enforce the laws which Congress enacts for the protection of the public, they may well have to depend upon informers, undercover agents, special employees and their own knowledge of the underworld obtained from years of experience.

The legislative history of the Narcotic Control Act of 1956 makes clear that Congress was seriously concerned with the need for narcotics agents to act immediately to combat this illicit traffic. It was for this reason that the law specifically granted the agents the authority to arrest without a warrant, on probable cause. As the House Report points out (H. Rep. No. 2388, 84th Cong., 2d Sess., p. 10):

> The enforcement officers have been required to secure an arrest warrant or a search warrant, even though circumstances indicate the impracticability of such a procedure. The delay involved in obtaining a warrant permits the destruction or removal of the narcotic evidence and allows the narcotic traffickers to escape prosecution for their crime. These and other restrictions on enforcement officers leave the public unprotected and give narcotic violators, especially the more reprehensible, larger racketeers and wholesalers, an advantage over law-enforcement officers in their efforts to combat the illicit narcotic traffic.

See also *id.* at p. 62; S. Rep. No. 1997, 84th Cong., 2d Sess., p. 11.

The agents here acted in compliance with the mandate given to them by Congress within the limitations imposed by the Fourth Amendment.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the court of appeals should be affirmed.

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